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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,571	07/24/2001	William A. Pugh	41017.P004X	5944
25943	7590	08/04/2004	EXAMINER	
SCHWABE, WILLIAMSON & WYATT, P.C. PACWEST CENTER, SUITES 1600-1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204			NGUYEN BA, HOANG VU A	
			ART UNIT	PAPER NUMBER
			2122	

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/912,571

Applicant(s)

PUGH ET AL.

Examiner

Hoang-Vu A Nguyen-Ba

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892) \*
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This action is responsive to the application filed July 24, 2001, which is a CIP of application no. 09/803,178 filed March 9, 2001.
2. Claims 1-24 have been examined.

### ***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Objections***

4. Claims 3, 4, 5, 6, 7, 10, 11, 12, 13, 16 and 21 objected to because of the following informalities.

The term "remove" should be changed to -- removed -- in claim 3 at line 3, in claim 5 at line 2, in claim 6 at line 2, in claim 7 at line 2, in claim 10 at line 3, in claim 11 at line 2, in claim 12 at line 2, in claim 13 at line 2, in claim 16 at line 3 and in claim 21 at line 3.

A colon -- : -- should be added at the end of line 1 of claim 4, 3 of claim 5, 3 of claim 6.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 8, 14, 19 and 22: after carefully reading the claim language of these claims, it is unclear as to which device initiates a request for update, which device is receiving the request, which device is updating which device, whether the dispatcher is one of the update service, whether only the runtime library is updated or both the runtime library and the application. Clarification is needed.

Claims 2-7, 9-13, 15-18, 20-21 and 23-24, which depend from claims 1, 8, 14, 19 and 22, respectively contain the same deficiencies of the base claims. These claims are thus rejected for the same reasons.

Claim 17: the claim language of claim 17 is unclear and confusing. For art rejection purposes, claim 17 is interpreted to be equivalent to claim 6.

Claims 23 and 24: do not further limit claim 22. Neither claim 23 nor claim 24 recites any additional steps that further limit the step of receiving notification by the client or the step of upgrading the client or the step of notifying another update service. For art rejection purposes, claims 23 and 24 are interpreted to recite another different version of the runtime library.

Claims 9, 10, 11, 12, 13 recite the limitation "said second later version" at line 1. There is insufficient antecedent basis for this limitation in the claims.

Claims 19 (lines 6, 7 and 9) and 22 (lines 5, 6 and 9) recite the limitation "said application". There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,009,274 to Fltscher et al. (“Fletcher”).

### **Claim 1**

Fletcher discloses at least:

*receiving a request by a first update service of a first version of said application service provision runtime library to upgrade an application to a second later version of the runtime library (see at least 5:53 – 6:49); and*

*a second update service of said second later version of the runtime library upgrading said application to said second later version of the runtime library (see at least 5:53 – 6:49).*

### **Claim 8**

Fletcher discloses an apparatus comprising a storage medium having stored thereon programming instructions and at least one processor for performing at least the following:

*receive notification from a first upgrade service of a first version of an application service provision runtime library of an application requesting upgrade to a second version of the application service provision runtime library (see at least 5:53 – 6:49); and*

*notify a second upgrade service of said second version of the application service provision runtime library of said request (see at least 5:53 – 6:49).*

**Claim 14**

Claim 14 recites an apparatus comprising the same storage medium and processor for performing the same method steps of claim 8. Therefore the same rejection is applied.

**Claim 19**

Fletcher disclose at least an apparatus comprising a storage medium having stored thereon programming instructions and at least one processor for performing at least the following:

*a first update service to receive a notification from a selected one of a second update service of a predecessor version of said first version of the runtime library and a dispatcher of the apparatus to upgrade said application to said first version of the runtime library (see at least 5:53 – 6:49);*

*to upgrade, in response, said application to said first version of the runtime library (see at least 5:53 – 6:49); and*

*to notify the selected one of said second update service and said dispatcher of completion of said upgrade of said application to said first version of the runtime library (see at least 5:53 – 6:49).*

**Claim 22**

Claim 22 recites an apparatus comprising a storage medium having stored thereon programming instructions and at least one processor for performing the same method steps of claim 19. Therefore the same rejection is applied.

**Claims 2, 9, 15 and 20**

The rejection of base claims 1, 8, 14 and 19 respectively is incorporated.

Fletcher further discloses *wherein said second later version of the runtime library is a selected one of the most current version of the runtime library and a predecessor version of the most current version of the runtime library* (see at least 5:53 – 6:49).

**Claims 3, 10, 16 and 21**

The rejection of base claims 1, 8, 14 and 19 respectively is incorporated.

Fletcher further discloses *wherein said second later version of the runtime library is a selected one of an immediate successor version of said first version of the runtime library and a successor version of greater than one generation remove from said first version of the runtime library* (see at least 5:53 – 6:49).

**Claim 4**

The rejection of base claim 1 is incorporated. Fletcher further discloses:

*said first update service of said first version of said application service provision runtime library notifying a dispatcher of said application service provision apparatus of said upgrade request* (see at least 5:53 – 6:49); and

*said dispatcher notifying said second update service of said second version of said application service provision runtime library of said request* (see at least 5:53 – 6:49).

**Claim 5**

The rejection of base claim 1 and intervening claim 4 is incorporated. Fletcher further discloses:

*said dispatcher notifying a third update service of an immediate successor version of said first version of the runtime library of said request* (see at least 5:53 – 6:49);



*said third update service of said immediate successor version upgrading said application to said immediate successor version of the first version of the runtime library (see at least 5:53 – 6:49); and*

*said third update service of said immediate successor version notifying said dispatcher of completion upon upgrading said application to said immediate successor version of the first version of the runtime library (see at least 5:53 – 6:49).*

### **Claim 6**

The rejection of base claim 1 and intervening claim 4 is incorporated. Claim 6 recites the same limitations of claim 5 which are applied to a request for *an immediate predecessor version of said second version of the runtime library*. Since the principle of implementing the method steps is the same, the same rejection is applied.

### **Claim 7**

The rejection of base claim 1 and intervening claim 4 is incorporated. Fletcher further discloses:

*said dispatcher notifying said second update service of said second version of said application service provision runtime library of said request directly (see at least 5:53 – 6:49); and*

*said second update service upgrading said application to said second version of the runtime library (see at least 5:53 – 6:49).*

### **Claim 11**

The rejection of base claim 8 is incorporated. Since claim 11 recites the same limitations of claim 5, the same rejection is applied.

**Claim 12**

The rejection of base claim 8 is incorporated. Since claim 12 recites the same limitations of claim 6, the same rejection is thus applied.

**Claim 13**

The rejection of base claim 8 is incorporated. Since claim 13 recites the same limitations of claim 7, the same rejection is thus applied.

**Claim 17**

The rejection of base claim 14 is incorporated. Since the claim language of claim 17 is unclear and confusing, claim 17 is interpreted to be equivalent to claim 6 and is thus rejected for the same reasons.

**Claim 18**

The rejection of the base claim 19 is incorporated. Since claim 18 recites the same limitations of claim 4 with the only difference being that the notifying step is for a fourth update service, the same rejection of claim 4 is thus applied to claim 18 because the principle of notifying is the same.

**Claim 23**

The rejection of the base claim 22 is incorporated. The limitation *said first version of the runtime library is a predecessor version of at least one generation earlier than the most current version of the runtime library* is interpreted to be just another version of the runtime library stored on the update service which is deemed to be inherent to the teaching of Fletcher. Without the availability of different versions, version management is inoperative.

#### **Claim 24**

The rejection of the base claim 22 is incorporated. The limitation *said first version of the runtime library is an immediate successor version of said predecessor version of the runtime library* is interpreted to be just another version of the runtime library stored on the update service, which is deemed to be inherent to the teaching of Fletcher. Without the availability of different versions, version management is inoperative.

#### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoang-Vu A Nguyen-Ba whose telephone number is (703) 305-0103. The examiner can normally be reached on Tuesday-Friday, 6:00 – 16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**ANTHONY NGUYEN-BA  
PRIMARY EXAMINER**

Art Unit 2122

July 20, 2004